

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
And
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD**

W.A.NO.119 OF 2005

Between:
J.S.Rama Murthy

.....Appellant

AND

The Registrar of Cooperative Societies,
Andhra Pradesh Gruhakalpa Buildings,
Nampally, Hyderabad and two others.

.....Respondents

::JUDGMENT::

Counsel for the Petitioner : Sri D.V.Bhadram

**Counsel for Respondent No. 1 : Government Pleader for
Cooperation**

Counsel for Respondent No. 2 : Sri L.Prabhakar Reddy

Counsel for Respondent No. 3 : Sri A.Sudershan Reddy

Dated 4/4/2006

Per Sri G.S.Singhvi, CJ

This appeal is directed against order dated 29.12.2004 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant for grant of a declaration that he is entitled to allotment of a suitable plot in the lay out prepared by the Jubilee Hills Cooperative House Building Society Limited, Hyderabad (respondent No.2) in terms of award dated 1.12.1992 passed in ARC No.10 of 1992.

The claim made by the appellant for allotment of plot has a chequered history. Almost 14 years ago, he filed ARC No.10 of 1992 under Section 61 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act') before Deputy Registrar of Cooperative Societies (Housing), Hyderabad for issuance of a direction to respondent No.2 to consider his claim for allotment of plot. The same was allowed by the officer concerned, vide award dated 1-12-1992. He directed respondent No.2 to allot a suitable plot to the appellant. Respondent No.2 challenged the award by filing an appeal under Section 76 (1) of the Act, which was registered as CTA No.462 of 1994. By an order dated 27-7-1996, the appellate authority dismissed the appeal with the rider that the award be implemented keeping in view the seniority of the appellant and availability of the vacant plots.

Notwithstanding his success in two quasi-judicial forums, the appellant could not get the plot. Therefore, after a gap of three years, he filed Writ Petition No.21972 of 1999 for issuance of a direction to the non-petitioners to implement award dated 1.12.1992. The learned Single Judge, vide his order dated 30-10-1999, dismissed the writ petition with an

observation that the writ petitioner (appellant herein) is at liberty to avail alternative remedy under Section 70-A of the Act. Writ Appeal No.131 of 2000 filed by the appellant met with the same fate because the Division Bench dismissed the same on 10.2.2000 and reiterated that the remedy available to him is to file an application under Section 70-A of the Act for execution of the award.

Thereafter, the appellant filed an application dated 19.3.2000 under Section 61 of the Act. The same was rejected by the competent authority vide endorsement dated 4.4.2000. The appellant challenged the same by filing an appeal. Since the appeal was deficient in some respect, the same was registered as CTA SR No. 2490 of 2000. The Tribunal dismissed the appeal as not maintainable. The appellant challenged order dated 4-4-2000 passed by the competent authority and order dated 26-6-2000 passed by the Tribunal by filing a petition under Article 226 of the Constitution, which was registered as Writ Petition No.19556 of 2000. Since the prayer made in that petition is crucial for decision in this appeal, the same is reproduced below:

“It is therefore prayed that this Honourable Court may be pleased to issue a writ, direction order or orders more particularly in the nature of writ of mandamus under Article 226 of the Constitution of India, declaring the action of the 2nd respondent (i.e.) the Registrar of Cooperative Societies, A.P. Hyderabad in not admitting the dispute filed u/s 61(1) (b) of the A.P.Cooperative Societies Act 7 of 1964 and returning the original papers through endorsement N. dis.No.13740/2000/Hsg-I dated 4.4.2000 and the consequential orders dated 26.6.2000 of the 1st respondent herein i.e. A.P. Cooperative Tribunal at Hyderabad in CTA Sr No.2490/2000 in rejecting the appeal is not maintainable, as arbitrary, without application of mind, contrary to law, weight of evidence, besides being violative of the judgment of this Honourable Court and set aside them and pass such other order or orders as this Honourable Court may deem fit and

proper in the circumstances of the case.”

The appellant would have been well advised to make efforts for expeditious disposal of Writ Petition No.19556 of 2000, but instead of adopting that course, he filed Writ Petition No.20128 of 2003 for issuance of a direction to respondent No.2 to allot a suitable vacant plot to him as per his seniority.

In the counter filed by the contesting respondents, it was pleaded that the writ petition is barred by res judicata because the issue raised therein was similar to the one pending adjudication in Writ Petition No.19556 of 2000.

The learned Single Judge upheld the objection raised on behalf of the contesting respondents and dismissed the writ petition by holding that the same is barred by res judicata. In the opinion of the learned Single Judge, the relief claimed in Writ Petition No.20182 of 2003 is almost identical to the one claimed in Writ Petition No.19556 of 2000 and, therefore, the subsequent writ petition was liable to be treated as barred by res judicata.

We have heard learned counsel for the parties and scanned the record. In our opinion, even though the genesis of the claim made by the appellant in Writ Petition No.19556 of 2000 can be traced in award dated 1.12.1992 passed by Deputy Registrar of Cooperative Societies (Housing) Hyderabad and the prayer made in Writ Petition No.20128 of 2003 can be said to be founded on the earlier litigation including Writ Petition No.21972 of 1999 and Writ Appeal No.131 of 2000 which were dismissed by the Single and Division Benches of this Court, it is not possible to approve the view taken by the learned Single Judge that Writ Petition No.20128 of 2003 was barred by res judicata. The prayers made in the two writ petitions are substantially different, inasmuch as, in Writ Petition No.19556 of 2000, the appellant has prayed for quashing orders dated 4-4-2000 and 26-6-2000 passed by the competent authority and the appellant authorities

respectively, whereas in Writ Petition No.20182 of 2003, he prayed for issuance of a mandamus to respondent No.2 as per his seniority in terms of award dated 1-12-1992 and to restrain the said respondent from allotting/transferring/registering any plot to any other person. Therefore, the appellant could not have been non-suited by invoking the doctrine of constructive res judicata.

For the reasons stated above, the appeal is allowed. The order of the learned Single Judge is set aside with the direction that Writ Petition No.20128 of 2003 be listed for fresh adjudication before the Single Bench. In order to obviate the possibility of inconsistent orders being passed by different benches, we direct that Writ Petition No.20128 of 2003 be listed for hearing along with Writ Petition No.19556 of 2000.

While disposing of the appeal in the manner indicated above and directing listing of Writ Petition No.20128 of 2003 with Writ Petition No.19556 of 2000, we deem it proper to make it clear that we have deliberately refrained from pronouncing on the merits of the claim made by the appellant and it will be open for the Single Bench to consider and decide the entitlement, if any, of the appellant to be allotted a plot. It will also be open to the learned Single Judge to first adjudicate on the legality of orders dated 4.4.2000 and 26.6.2000 passed by the authorities constituted under the Act and then decide whether it was a fit case for exercise of jurisdiction under Article 226 of the Constitution for issuance of a mandamus for allotment of plot to the appellant. The parties are left to bear their own costs.

As a sequel to the disposal of this appeal, WAMP Nos. 468, 438, 179, 180 of 2005 and 765 of 2006 are disposed of as infructuous.

G.S.SINGHVI, CJ

Dt.4/4/2006

Msv / svS